


## INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference NPS/P104661WO	<b>FOR FURTHER ACTION</b>		See Form PCT/PEA/416
International application No. PCT/EP2005/001668	International filing date (day/month/year) 18.02.2005	Priority date (day/month/year) 18.02.2004	
International Patent Classification (IPC) or national classification and IPC F24C7/00, F21S10/04			
Applicant BASIC HOLDINGS et al.			
<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 5 sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input type="checkbox"/> sent to the applicant and to the International Bureau) a total of sheets, as follows:</p> <p><input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>			
<p>4. This report contains indications relating to the following items:</p> <p><input checked="" type="checkbox"/> Box No. I Basis of the opinion</p> <p><input type="checkbox"/> Box No. II Priority</p> <p><input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p><input type="checkbox"/> Box No. IV Lack of unity of invention</p> <p><input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p><input type="checkbox"/> Box No. VI Certain documents cited</p> <p><input checked="" type="checkbox"/> Box No. VII Certain defects in the international application</p> <p><input checked="" type="checkbox"/> Box No. VIII Certain observations on the international application</p>			
Date of submission of the demand  16.12.2005		Date of completion of this report  17.02.2006	
Name and mailing address of the international preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465		Authorized Officer  von Mittelstaedt, A  Telephone No. +49 89 2399-	



**INTERNATIONAL PRELIMINARY REPORT  
ON PATENTABILITY**

International application No.  
PCT/EP2005/001668

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**Box No. I Basis of the report**

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1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This report is based on translations from the original language into the following language , which is the language of a translation furnished for the purposes of:
- ☐ international search (under Rules 12.3 and 23.1(b))
  - ☐ publication of the international application (under Rule 12.4)
  - ☐ international preliminary examination (under Rules 55.2 and/or 55.3)
2. With regard to the **elements**\* of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:

**Description, Pages**

1-18 as originally filed

**Claims, Numbers**

1-37 as originally filed

**Drawings, Sheets**

1/5-5/5 as originally filed

☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing

3. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages
- ☐ the claims, Nos.
- ☐ the drawings, sheets/figs
- ☐ the sequence listing *(specify)*:
- ☐ any table(s) related to sequence listing *(specify)*:

4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

- ☐ the description, pages
- ☐ the claims, Nos.
- ☐ the drawings, sheets/figs
- ☐ the sequence listing *(specify)*:
- ☐ any table(s) related to sequence listing *(specify)*:

\* If item 4 applies, some or all of these sheets may be marked "superseded."

**INTERNATIONAL PRELIMINARY REPORT  
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International application No.  
PCT/EP2005/001668

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**Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

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1. Statement

Novelty (N)	Yes: Claims	2-14, 16-26, 29-37
	No: Claims	1, 15, 27, 28
Inventive step (IS)	Yes: Claims	10, 11, 23-26
	No: Claims	1-9, 12-22, 27-37
Industrial applicability (IA)	Yes: Claims	1-37
	No: Claims	

2. Citations and explanations (Rule 70.7):

**see separate sheet**

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**Box No. VII Certain defects in the international application**

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The following defects in the form or contents of the international application have been noted:

**see separate sheet**

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**Box No. VIII Certain observations on the international application**

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The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

**see separate sheet**

The following documents are referred to in this communication; the numbering will be adhered to in the rest of the procedure:

- D1: US 2002/152655 A1 (MERRILL DAVID ALLEN ET AL) 24 October 2002 (2002-10-24)
- D2: CA-A1-2 321 716 (DIMPLEX NORTH AMERICA LIMITED) 10 September 1999 (1999-09-10)
- D3: GB-A-2 242 736 (CONSORT EQUIPMENT PRODUCTS LIMITED) 9 October 1991 (1991-10-09)

**V. Novelty and inventive step**

1. According to all the essential features of claim 1 document D1 discloses (the references in parentheses applying to this document) a simulated fuel effect fire with simulated fuel elements. Even though not stated, it is implicit, that at least the visible portions are shaped and coloured as to resemble a real fuel element, e.g. a log. In par. [0024], foam is listed as a possible material for manufacturing of the logs. As the description of D1 reads, and the fact, that the other listed materials (concrete or ceramic fiber) are non-translucent, it is clear, that the logs are not designed for shining, but that the light comes out between the logs around the light strip 1. For a person skilled in the art, it is thus implicit, that the foam is of non-translucent type. Therefore the subject matter of claim 1 is not new. (Article 33(2) PCT).
2. The same applies to independent claim 15.
3. Document D2 shows in figures 4 and 2 a region with reflecting (43) and non-reflecting regions (41). With the non-reflective regions cracks are simulated (page 5, l. 15-17). The non-reflecting regions (41) may be manufactured by paint, inc or by etching, and it is implicit, that they are dark-coloured. Therefore, claim 3 lacks an inventive step. (Article 33(3) PCT).
4. The subject matter of claims 12, 29 and 30 can easily be obtained by combining the teaching of documents D1 and D3. They therefore lack an inventive step. (Article 33(3) PCT).
5. The dependent claims 2, 4-9, 13, 14, 16-22, 27, 28 and 31-36 have no essential features, that meet the requirements of the PCT in respect of an inventive step.

**INTERNATIONAL PRELIMINARY  
REPORT ON PATENTABILITY  
(SEPARATE SHEET)**

International application No.

PCT/EP2005/001668

6. Independent claims 10 and 23 with dependent claims 11 and 24-26 are allowable.

**Re ITEM VII.**

7. The independent claims are not in the two-part form in accordance with rule 6.3(b)(ii) PCT, with those features known from the prior art being placed in the preamble and with the remaining features in the characterising part of the claim.
8. The features of the claims should be provided with reference signs placed in parentheses to increase the intelligibility of the claims (Rule 6.2(b) PCT). This applies to both the preamble and characterising portion.
9. In order to meet the requirements of rule 5.1(ii) PCT, document D1, D2 and D3 as cited in the search report, should be mentioned in the description. The state of the art should briefly be summarized.
10. If filing of a european patent application is intended, it should be pointed out here, that under article 84 in combination with Rule 29(2) EPC an application may contain more than one independent claim in a particular category only if the subject matter claimed falls within one or more of the exceptional situations set out in paragraphs (a), (b) or (c) of Rule 29(2) EPC, which is not the case in the present application. The applicant would therefore be requested to file an amended set of claims which complies with Rule 29(2) EPC.

**Re ITEM VIII.**

11. Claim 37 is not allowable under Article 6 PCT since it is not clear which subject matter is claimed.